SINGAPORE REPORTS

YEO KEE HOW v. CONTAINER WAREHOUSING & TRANSPORTATION (PTE.) LTD.

[O.C.J. (Winslow J.) November 26, 1975]
[Singapore — Suit No. 601 of 1973]

Employment — Termination of service — Contract of employment "... for a term of 3 years from date hereof and thereafter until this Agreement shall be terminated by either party by giving 3 months' notice in writing to the other" — Construction of — Whether termination was lawful.

Contract — Contract of employment — Claim for breach of contract — Whether termination was unlawful — Construction of clause in contract.

The plaintiff as the Commercial Manager of the defendants claimed damages for breach of contract as a result of a notice of termination given to him by a letter dated February 16, 1973 by the defendants. The said letter read as follows:

"As required under Clause No. 1 of your Service Agreement with the Company, I hereby give notice in writing on behalf of Container Warehousing & Transportation (Pte.) Ltd. that the said Agreement will be terminated in three months time on 15 May 1973."

The plaintiff contended that the notice of termination was in violation of the terms of the said Service Agreement as a result of which he suffered loss and damage which he had mitigated by obtaining employment elsewhere commencing on March 12, 1973 at a salary lower than that drawn with the defendants.

The relevant clauses of the Service Agreement herein made between the parties dated July 17, 1971, read as follows:

"I. C.W.T. shall employ the Commercial Manager and the Commercial Manager shall serve C.W.T. as Commercial Manager for a term of 3 years from the date hereof and thereafter until this Agreement shall be terminated by either party by giving 3 months' notice in writing to the other.

II. Upon expiry of this Agreement either C.W.T. or the Commercial Manager may request a renewal of the said Agreement or enter into a fresh Agreement under such terms and for such purposes as may be determined, by giving to the other three calendar months notice in writing."

The plaintiff contended that clause I provided for a 3 years' engagement determinable "thereafter", meaning after the three-year period, by either party giving 3 months' notice and that it was wrong for the defendants to claim that they could terminate the Agreement by service of the requisite notice when the Agreement still had 18 months to run.

Held, dismissing the plaintiff's claim: (1) the meaning of an instrument or document must be sought for in the document itself and the intention of the parties must be ascertained from the expression they have used in the document itself. What parties intend may differ from what they have expressed. It is only when the words they have used are not clear that recourse may be had to the expressions of intention contained in the document as a whole;

(2) common sense and business efficacy require clause I to be read as "for a term of 3 years from and after the date of this Agreement until terminated" in the light of the intentions of the parties as expressed in the Agreement as a whole including clause II.

Cases referred to:-

(1) *Jacks & Co.* v. *Palmers Shipbuilding Co.* (1929) 98 L.J.K.B. 366.
(2) *Costigan* v. *Gray Bovier Engines Ltd.* (1925) 41 T.L.R. 372.
(3) *Langton v. Carleton* (1873) L.R. 9 Ex. 57.
(4) *Pearce* v. *Foster* (1886) 17 Q.B.D. 542.

CIVIL SUIT.

C.S. Wu for the plaintiff.

P. Selvadurai for the defendants.

Winslow J.: A matter of paramount importance to be first resolved in this action concerns the true meaning to be ascribed to clauses I and II of the Service Agreement herein made between the parties dated July 17, 1971. These clauses read, as to the material parts thereof, as follows: —

"I. C.W.T. shall employ the Commercial Manager and the Commercial Manager shall serve C.W.T. as Commercial Manager for a term of 3 years from the date hereof and thereafter until this Agreement shall be terminated by either party by giving 3 months' notice in writing to the other.

II. Upon expiry of this Agreement, either C.W.T. or the Commercial Manager may request a renewal of the said Agreement or enter into a fresh Agreement under such terms and for such purpose as may be determined, by giving to the other three calendar months notice in writing."

In this action the plaintiff as the Commercial Manager referred to in the Service Agreement claims damages for breach of contract as a result of a notice of termination thereof given to him by a letter dated February 16, 1973 by the defendants who are referred to as "C.W.T." in that agreement.

It is the contention of the plaintiff that his services with the defendants which commenced on July 17, 1971 were terminated by the defendants to take effect from May 15, 1973 in violation of the terms of the said agreement as a result of which he has suffered loss and damage which he has mitigated by obtaining employment elsewhere commencing on March 12, 1973 at a salary lower than that drawn with C.W.T. It is accordingly necessary to construe the two clauses mentioned earlier before proceeding to deal with the facts which I find on the evidence.

The letter of February 16, 1973 is in the following terms: —

"As required under Clause No. 1 of your Service Agreement with the Company, I hereby give notice in writing on behalf of Container Warehousing & Transportation (Pte) Ltd. that the said Agreement will be terminated in three months time on 15 May 1973.

You will be permitted to take 16 days annual leave which is due to you up to 15 May 1973. In addition to the 16 days annual leave, you will be given 73 days special leave which will cover the remaining period of notice. All this leave will commence as from today.

Your salary up till the last day of notice will be paid as usual into your Current Account with the First National City Bank at the end of each month except for the month of May 1973 when arrangements will be made for the payment to be made on or before 15 May 1973.

Kindly return the Diners Club Credit Card issued to you by the Company and hand over all C.W.T. documents and files, including those pertaining to CTI, to Mr. Kelvin Yap before you leave today."

Counsel for the plaintiff, Mr. C.S. Wu, submits on the law that Clause 1 provides for three year engagement determinable "thereafter", meaning after the three-year period, by either party giving three months' notice and that it is "fallacious for the defendants to claim that they could terminate the agreement by service of the requisite notice when the agreement still had 18 months to run". On this construction, the plaintiff claims that the letter of February 16, 1973 amounts in law to a breach and repudiation of the agreement which the plaintiff accepted in his reply through his solicitors dated February 20, 1973.

The defendants' counsel, Mr. P. Selvadurai, submits that there has been no breach or repudiation as aforesaid. On the contrary, it has been pleaded that the said letter of February 16, 1973 was served on the plaintiff because he "had failed to use all proper means in his power to maintain improve and extend the business and protect and further the reputation and interests of the defendants and had failed to devote his whole time and attention during business hours to the business of the defendants and to use his best endeavours to promote the defendants' interest and welfare, as required by Clauses 2 and 3(a) of the said agreement dated July 17, 1971".

The defendants, by paragraph 3 of their defence alternatively contend that —

"since the commencement of this action by the plaintiff the defendants have discovered that the plaintiff had, on or about the 18th September, 1972 misconducted himself by attempting to get one Kelvin Yap, an employee of the defendants, to leave the service of the defendants and to join the service of a company named United Motor Works (S) Pte. Ltd. of Orchard Road, Singapore. The defendants will also rely upon the said misconduct to justify the termination by the defendants of the plaintiff's contract by the said letter dated 16th February, 1973."

The allegations by the defence of failure by the plaintiff to fulfil his fundamental obligations to the defendants under clauses 2 and 3(a) of the agreement to protect and further the reputation and interests of the defendants and to promote their interest and welfare as well as the allegation of misconduct relied upon to justify the termination of the agreement will arise for consideration, with a view to my deciding whether they have been proved by the defendants, only if I find that, upon the true construction to be placed on clause I of the agreement read with clause II thereof, the said agreement was incapable of being terminated without just cause by either party on giving three months' notice at any time before the expiration of the three-year period commencing on July 17, 1971.

Counsel for the plaintiff relies on 3 cases: *Jacks & Co.* v. *Palmers Shipbuilding Co.*,[1] *Costigan* v. *Gray Bovier Engines Ltd.*[2] and *Langton* v. *Carleton*[3] for the proposition that as the "termination clause" in each case "is very similar in wording as well as in apparent intention" to Clause I of the present Agreement, this clause should therefore be similarly construed. He submits that all the judges in these 3 cases "unanimously held that the contracts were only determinable by notice *after* the expiry of the specific term of the engagement". Whilst he is, in my opinion, only partially correct in this, as will hereinafter appear, the language of clause I of this agreement bears considerable similarity to the language of the termination clause in *Costigan's* case and some similarity to the termination clause in *Jacks & Co.'s* case.

To take *Costigan* first, the engagement "was deemed to have commenced on September 11, 1922 and was to continue for a period of 12 calendar months from such date, and thereafter until determined by three calendar months' notice in writing given by either party at any time to the other." The Court of Appeal upheld Roche J.'s decision to the effect that the engagement was for a minimum period of 12 months terminable by 3 months' notice given either during the 12 months or after the end of the 12 months. The Master of the Rolls, who admitted that his mind had fluctuated considerably during the argument, rejected the view that the engagement could be treated as one engagement ending in 12 months and another engagement for an indeterminate period which would be determined after the first 12 months by 3 months' notice. His Lordship reached this conclusion on the ground that there was only one engagement which could be terminated "at any time" on 3 months' notice by either party, provided that it lasted at least 12 months.

In the case of *Jacks & Co.*, a later case, the Court of Appeal considered *Costigan's* case by which it felt bound because the wording was substantially the same. The wording in the *Jacks & Co.* case was "the above agreement is to hold good for a period of twelve months from April 22, 1927, with six months' notice thereafter on either side to terminate." Here again the Court of Appeal held that there was only one engagement for a period of 12 months at least which was not terminable until 6 months' notice had been given. Such notice was not to be given until after the period of 12 months. As one of their Lordships, Sankey L.J., said, "that is the best construction I can give to a very puzzling clause".

It will be seen that although the clauses in *Costigan's* case and *Jacks & Co.'s* case did cause mental fluctuation to the Master of the Rolls in the former and did puzzle at least one judge in the latter case, as aforesaid, all members of both Courts of Appeal were unanimous in their construction of the two clauses which were substantially the same in wording, except that in *Costigan's* case, the words "at any time", qualifying, as they did, the giving of the requisite notice, led to a slightly different construction of the timing of that notice. All were unanimous however that each of the two clauses provided a minimum period of engagement viz., twelve months.

Roche J. who was the judge at first instance in both cases, however, apparently "forgot" in *Jacks & Co.'s* case, per Scrutton L.J., what he had decided in *Costigan's* case where the Court of Appeal had upheld him, when it came to deciding *Jacks & Co.'s* case. He purported, after considerable doubt, to follow the decision in *Langton* v. *Carleton* on which the defendants relied. The Court of Appeal was unable to uphold him this time. I do not think any useful purpose will be served by my dealing at length with the *Langton* case except to say that it was a divided bench which decided by a majority of 2 to 1 that an agreement to serve "for twelve months certain, after which time either party could terminate it by three months' notice" meant that, at the end of the 12 months, the agreement could be terminated by either party without any notice and that the provision as to notice only applied if the parties did in fact prolong the engagement beyond the period of 12 months.

The members of the Court of Appeal in the *Jacks & Co.* case were able to reach their conclusion without saying whether *Langton* v. *Carleton* was rightly or wrongly decided.

Counsel for the plaintiff, in his written submission on the law, is, accordingly, only partially correct when he states that all the judges in all these three cases unanimously held that the contracts were only determinable by notice *after* the expiry of the specified term of engagement. It was only the *Jacks* case which so decided. *Costigan's* case, because of the provision as to the timing of the notice, by virtue of the words "given at any time", decided that the notice could be given during the 12 months provided the engagement was for at least 12 months. *Langton's* case, however, did not decide that the contract in question was only determinable by notice after the 12 months. It held that the contract could be terminated at the end of 12 months without any notice. It was only if the engagement was, in fact, prolonged beyond that period that 3 months' notice had to be given.

One can perhaps now appreciate why Roche J. forgot what he had previously decided in *Costigan's* case when one appreciates how a slight change in wording can make all the difference to the construction of one set of words in the context of the facts and circumstances of the particular case in which such words are used.

As the Master of the Rolls, Sir Ernest Pollock, in *Costigan's* case, who candidly admitted to considerable mental fluctuation in construing the words in that case, said, two classes of cases were cited *i.e.* those relating to tenancy agreements which depended on different considerations because of the rule about holding over and those relating to service agreements. He stressed that each case must be dependent on its own particular facts. This is not as trite as it may sound, familiar as we are with such pronouncements.

When one examines the report of the *Costigan* case we find that the facts reveal that the defendant company had been operating at a financial loss during the year, that the plaintiff was going to get a bonus and that Mr. Gray, a director of the defendant company, who gave the notice of termination in question, considered the agreement rather one-sided on many points and that it would "require revision when the time came". He further wrote a subsequent letter to the plaintiff saying, "I will discuss the further agreement with you in due course." These were some of the salient background facts relating to the climate in which the termination notice came to be given.

It therefore seems to me both relevant as well as necessary to have regard to the salient facts relating to the conclusion of the service agreement between the Commercial Manager and C.W.T. who are the parties in the present suit and such other facts as may be pertinent to a true construction of clause I including the circumstances in which the termination letter of February 16, 1973 came to be written to the plaintiff by the defendants.

Before I turn to such of the salient facts relating to clause I without of course dealing with the evidence adduced by the defendants as part of their defence in trying to prove justification of their letter of February 16, 1973, I would first refer to clause II.

All the 3 cases cited so far refer to similar clauses relating to what has been described as the termination clause i.e. clause I, In not one of these cases, to which I have already referred, was there a clause such as clause II, It may well be that clause II is not as irrelevant to an understanding of the true construction of clause I as counsel for the plaintiff appears to suggest in his written submission on the law at page 7 which he concludes as follows: "Clause II has no bearing on the present case as it only operates after the expiry of the initial 3-year period." I therefore propose to examine clause I to ascertain what it means when read in conjunction with clause II.

It will have been noted from the decisions in the 3 cases cited earlier that the wording of clause I, read alone, would seem to receive some support for the proposition that the agreement is for a minimum period of three years just as the termination clauses in the *Costigan* and *Jacks & Co.* cases were held to be agreements for a minimum period of 12 months as specified therein. I must say that, at first, I was impressed by the close similarity of the words used in the termination clauses in these two cases and, if one follows the line of reasoning adopted by the learned Master of the Rolls in *Costigan's* case in the light of the attendant facts, there is something to be said for construing clause I as Mr. Wu contends viz., that it envisages an agreement by C.W.T. to employ the Commercial Manager for at least 3 years upon the expiration of which period either party can terminate the said agreement by 3 months' notice.

The question is, however, whether clause II which may, for short, be called the 'renewal clause" is consistent with clause I and the interpretation of that clause as submitted by counsel for the plaintiff.

Clause II as reproduced at the commencement of this judgment provides that "upon expiry of this agreement", either party may request a renewal thereof or enter into a fresh agreement upon terms to be determined, by giving the other 3 months' notice in writing.

On the facts of this case, there never was any question in February 1973 of a renewal of the agreement or a fresh agreement on the part of C.W.T.

So far as the facts relating to the Commercial Manager are concerned, it is clear from the facts which I find that he was undoubtedly seeking employment on better terms with Sealand Services Inc. about seven months after he had commenced employment with C.W.T. and I have little doubt that, if he had been successful, he would have construed clause I in exactly the same way in which C.W.T.'s two General Managers, one at the commencement of the engagement and the other, at the date of the termination letter of February 16, 1973, construed it.

As is clear from the facts relating to the circumstances in which the agreement came to be signed by the parties, C.W.T. certainly thought that they had the right to terminate the employment on 3 months' notice given at any time during the 3-year period mentioned in clause I. Notwithstanding the plaintiff's initial objections to any provision for 3 months' notice of termination as contained in clause I, he finally agreed to it after studying it carefully on its

being pointed out by the then General Manager, Abbas (DW4) that this was necessary.

I am not satisfied that, as the plaintiff claims, he was shown the first draft of the agreement at AB53 or D19B and took objection to the termination clause therein at clause 16. I accept the evidence of Abbas to the effect that it was most unlikely that he showed the original draft at Ex. D19B to the plaintiff. I find that he did not show him a written clause 16 though the plaintiff in prior negotiations had objected in discussions to any clause like clause 16 providing for his services to be terminated on 3 months' notice. That was his only objection.

I might add that the attitude of the plaintiff with regard to termination clauses generally providing for a period of notice of termination of his services is clearly revealed by the evidence of Christie (DW1) formerly of Sealand Services Inc., which I accept, to the effect that in early 1972 the plaintiff was a candidate for the post of Sales Manager with Sealand's and tnat, at first he wanted a 1 year contract with a guaranteed salary of US$1000 p.m. He asked for a "6 months' notice termination period" whereupon Christie told him that even the President of Sealand's only had a "2 weeks' notice period".

I am aware that the meaning of an instrument or document must be sought for in the document itself and that the intention of the parties must be ascertained from the expressions they have used in the document itself. What parties intend may differ from what they have expressed. It is only when the words they have used are not clear and unambiguous that recourse may be had to the expressions of intention contained in the document as a whole. I must accordingly expunge from consideration those declarations of intention dehors the service agreement itself such as the evidence of Abbas and Christie or, for that matter, the plaintiff himself may reveal.

I may however, I think, take into consideration the salient facts relating to the circumstances in which the document came to be signed, the conduct of the plaintiff in attempting to obtain employment from Sealand's during the 3-year period and the circumstances in which the letter of termination of February 16, 1973 came to be given. For example, I do not accept the evidence that Liau (DW2) who was the General Manager, when delivering this letter, told the plaintiff to "Get out" in those words. I am entitled however to reach the conclusion, which I do, that the plaintiff was a disgruntled man at the time he started looking for another posting in early 1972. I can, I think, also take into account the fact that the plaintiff was anxious to achieve terms of employment which were most unusual for that particular kind of business in that even the President of Sealand's was subject to 2 weeks' notice of termination whereas the plaintiff was most anxious not to be subject to anything less than 6 months' notice. He may not have liked the service agreement at AB1 but he signed it.

I therefore return, with these background facts in mind, to a consideration of clauses I and II to ascertain exactly what they mean.

Mr. Wu submits that clause II clearly refers to the position at the expiry of the 3-year period when it says, "Upon expiry of the agreement". It is therefore pertinent to inquire when the agreement would expire or come to an end? In order to answer this question one must turn to clause I which provides that the employment shall be "for a term of 3 years from the date hereof and thereafter" until determined by notice etc. The proviso to clause I must also be given some meaning when it says that, "if, at any time, the Commercial Manager shall cease to be a Manager the agreement shall forthwith determine".

It should be noted that it says "a Manager" and not "Commercial Manager". He could, for example, become Operations Manager in which case the agreement would not come to an end. If he should die at any time the agreement would naturally expire. If he were to be demoted to any rank below that of Manager or resign, the agreement would also come to an end without prejudice to any remedy the plaintiff or C.W.T. might otherwise respectively have.

The important question is what would be his position, if, as actually happened in this case, he were given 3 months' notice during the 3-year period and, additionally, if he were asked to sever all connections with the business by handing over all files and documents to another officer of the company, as happened here, and to take compulsory leave for 73 days? Would he have ceased to be a Manager despite being promised his salary for the 3-month period of the notice? In my opinion there can be little doubt, if those are the facts as I find, that he would have ceased to be a Manager and the agreement would accordingly forthwith have determined on February 16, 1973 whatever the rights and the wrongs of the termination during the 3-year period may be. In those circumstances there is no doubt the agreement would have expired on that date in that he would no longer have been in employment under the agreement after that date.

It will be seen from the various possible ways in which the agreement can expire that Mr. Wu's contention that it can only expire at the end of the 3-year period is not necessarily correct. If he is right in saying that the agreement expires at the end of 3 years under clause II, he cannot, consistently with that submission, also submit that the agreement continues after 3 years for the purposes of clause I!

Moreover, upon such expiry, when can either C.W.T. or the plaintiff give 3 months' notice of a request to renew the agreement or when can they enter into a fresh agreement?

There are absurdities to which any construction of clause II can lead even if Mr. Wu's submission is correct that at the end of the 3-year period the agreement expires. According to Mr. Wu at page 7 of his written submission, "Reading clauses I and II together, the contracting parties clearly intended the contract to run a minimum of 3 years, and thereafter, plaintiff's employment would continue on the same terms but determinable by either side serving three months' notice." I think it is important to note that Mr. Wu has placed a comma after "three years"

before "and thereafter". In *Costigan's* case, it may be remembered there is also a comma after "date" and before "and thereafter." (I shall deal with the importance of the comma later). Mr. Wu continues, "If the parties should desire to renew etc., then one of them must first terminate the existing contract of service of (sic) three months' notice." It will be seen that he avoids answering the question as to when either should give three months' notice of the request for renewal etc. There is clearly an absurdity in all this and one is reluctantly driven in despair to the conclusion that the parties could not have intended an absurdity. Doing the best I can, I would read clause II as follows: —

"Within a reasonable time of not less than 3 months before the agreement expires by the effluxion of time at the end of three years, unless it has meanwhile been terminated by either party upon giving three months' notice in writing, either party may request a renewal etc. by giving 3 months' notice to the other in writing."

This construction of clause II gives business efficacy to the contract and is not inconsistent with the expression of their intention, considering the contract as a whole. Of course, if either party intended to renew the agreement or enter into a fresh agreement there would be no necessity to terminate the existing agreement by 3 months' notice in the first place because it could be successfully argued that a voluntary act of either party in terminating the agreement during the 3 years' period would not cause the agreement to expire by the mere effluxion of the period of time specified in the agreement.

I am therefore of the view that clause I should be read in accordance with the construction placed upon it by the defendants *viz.*,

"for a term of 3 years from and after the date hereof until this agreement shall be terminated by either party giving 3 months' notice to the other."

I might add that a small comma can make a world of difference to a service agreement such as this one particularly when one considers the difficulties encountered by the Courts of Appeal in the *Costigan* and *Jacks* case's. I would return to the comma in *Costigan.* In that case the employment was deemed to have commenced on September 11, 1922 although the actual date of the agreement was October 12, 1922 — hence the deeming provision. It was to continue for a period of 12 calendar months from such date," (*i.e.* September 11, 1922 and please note the comma after "such date,") "and thereafter until determined" etc. The comma causes one to pause awhile where it occurs. One cannot therefore read what follows the comma in *Costigan's* case as "and after such date" as one can certainly read the agreement in the case before me because no comma exists at the end of the words "from the date hereof".

It should be noted that there is no necessity for a "deeming" provision in the agreement as to the commencement of the employment as there was in *Costigan's* case. Further, *Costigan* speaks of the engagement as not only being deemed to commence at an earlier date than the agreement but it was to *continue* "for a period of 12 calendar months from such date, and thereafter" etc. In the present agreement the employment is for a term of 3 years "from the date hereof and thereafter". There is an expression of continuity in *Costigan's* case which does not exist in the present case. I am therefore satisfied that common sense and business efficacy require clause I to be read as "for a term of 3 years from and after the date of this agreement until terminated" etc., in the light of the intentions of the parties as expressed in the agreement as a whole including clause II.

Should I be wrong in my construction of clause I having regard to the surrounding circumstances attending the making of the agreement of July 17, 1971, I would add that, so far as concerns the defence of justification of the termination of the plaintiff's employment, I find that that defence has been made out and that, by and large, the witnesses for the defence are credible and acceptable as witnesses of truth, notably Liau, Christie, Kelvin Yap and Judy Leong. They were very fair witnesses in my opinion and they gave their evidence well. I have no hesitation in accepting them on matters in dispute. I reject the plaintiff's evidence on disputed matters.

Liau, the General Manager, was an excellent witness and he not only gave evidence with regard to matters which militated in favour of the defence but he also did not fail to disclose matters which were at times favourable to the plaintiff as well. The record will speak for itself.

With regard to paragraph 3 of the defence, I accept the evidence of Kelvin Yap. In so far as the evidence of Yong, the Manager of United Motor Works, may differ from Kelvin Yap's I prefer the evidence of Kelvin Yap. Yong's recollection too was rather poor. I am satisfied that Kelvin Yap knew nothing about why he was taken by the plaintiff to see Yong until he arrived at the Orchard Road office of United Motor Works with the plaintiff on what he thought was a routine sales visit. I am also satisfied that he received the application forms for a job with United Motor Works, not from Yong, but from the plaintiff on their return to their office and that he filled up those forms and posted them to Yong as requested by the plaintiff.

I have no hesitation in reaching the conclusion on the whole that the defendants have discharged the onus on them of proving those allegations to which I have earlier referred in this judgment and have, accordingly, proved justification for the action taken by them.

With regard to the discovery of facts relating to the attempt to subvert Kelvin Yap and Judy Leong which facts were discovered after the notice of termination of February 16, 1973, there is ample authority for the proposition that even if discovery is subsequently made it will justify the action taken earlier to terminate employment so long as the acts complained of did occur earlier than that date. I find that these acts did, in fact, occur before that date. In Kelvin Yap's case the facts under complaint occurred several months earlier.

On subsequent discovery, the observations of Lopes L.J. in *Pearce* v. *Foster*[4] as follows are pertinent: —

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

In my judgment, no employer in his right senses, if he knew the facts, even if he were an incurable optimist, could have failed to take note of the fact that his interests were being undermined.

I accordingly find that there was ample justification for the course taken by the defendants.

I have found, however, that, on the true construction of clause I, the termination of the plaintiff's services was lawful.

Judgment will accordingly be entered in favour of the defendants with costs.

Judgment for the defendants.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson.*

NG HENG KEANG & ORS. v. KIM POH ENG & ANOR.

[O.C.J. (Chua J.) November 24, 1976]
[Singapore — Suit No. 1307 of 1973]

Landlord and Tenant — Rent-controlled premises — Increase in rent — Claim of sub-tenancy — Claim for refund of excess rent paid — Whether there was tenancy or licensor-licensee relationship.

Premises No. 117, Telok Ayer Street, Singapore, is a coffee shop operated by the defendants. The premises are rent-controlled and rented by the defendants. Each of the plaintiffs rented a stall in the coffee shop for a certain sum per month and they carried on their business there as food sellers.

They contended, *inter alia,* that when they went to the coffee shop early in the morning of March 29, 1973, as they usually did, to prepare food for their business they were refused entry by the defendants with the result that they could not do any business. They alleged that they were locked out because they had refused to pay the increased rents which the defendants had demanded on March 28, 1973. They had not carried out any business in the coffee shop since. Evidence indicated that on July 21, 1973, the defendants had given the plaintiffs one month's notice to terminate their licence and to remove their foodstalls and chattels at the termination of their licence.

One of the main issues was whether the plaintiffs were tenants of the defendants or were merely licensees.

Held, allowing the defendants' counterclaim: (1) in determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee, the intention of the parties is the paramount consideration;

(2) in this case, there was no intention to create the relationship of landlord and tenant and not one of the plaintiffs had been granted exclusive possession. All that each of the plaintiffs had was a licence.

Case referred to:-

(1) *Cobb* v. *Lane* [1952] 1 All E.R. 1199 at p. 1202.

CIVIL SUIT.

L.M. Ong for the plaintiffs.

Andrew Ee for the defendants.

Chua J.: The plaintiffs' claim is

"1. for a declaration:—

(i) that the 1st, 2nd, 3rd and 4th plaintiffs and each of them were at the material time sub-tenants of the defendants;

(ii) that the said premises known as No. 117 Telok Ayer Street, Singapore 1 were and are protected premises within the meaning of the Control of Rent Act (Cap. 266) of 1970;

(iii) and that the plaintiffs and each of them were sub-tenants under the provisions of the said Act;

(iv) that the monthly rent hitherto paid by the plaintiffs and each of them to the defendants were illegal rent and that the plaintiffs and each of them were and are entitled to the refund of the excess rent paid by each of them during the period of their respective sub-tenancies.

2. Or alternatively for a declaration:—

(i) that the 1st, 2nd, 3rd and 4th plaintiffs and each of them were licensees of the defendants whose licences or respective licences have not been revoked by the service of any notice or reasonable notice or notices;

(ii) that the denial and exclusion of the plaintiffs and each of them and their respective servants from entering into the said premises was wrongful;

3. And the 1st, 2nd, 3rd and 4th plaintiffs and each of them claim against the defendants for special and general damages."

The short facts are these. Premises No. 117 Telok Ayer Street, Singapore, is a coffee shop operated by the first and second defendants, under the style of "Eng Seng" after the death of Tan Eng Kwan the husband of the first defendant and the father of the second defendant. The premises are rent-controlled premises and rented by the defendants at a rent of $123.75 p.m.

The first and second plaintiffs were partners and they carried on business selling curry rice and pork porridge at Eng Seng coffee shop. They had two stalls in the coffee shop paying $200 p.m. to the defendants.

The third plaintiff was selling cooked noodles at a stall also in the coffee shop and he was paying $120 p.m. to the defendants.

The fourth plaintiff had a stall in the same coffee shop selling cooked chicken rice and paying $260 p.m. to the defendants.

The plaintiffs allege that when they went to Eng Seng coffee shop early in the morning of March 29, 1973, as they usually did, to prepare food for their business they were refused entry by the defendants with the result that they could not do any business. They allege that they were locked out because they had refused to pay the increased rents which the defendants had demanded on March 28, 1973. They had not carried out any business in Eng Seng coffee shop since.

The first main question for consideration is whether the four plaintiffs were tenants of the defendants or were merely licensees.

Premises No. 117 Telok Ayer St. was a coffee shop as far back as 1949 operated by Seng Yee Kim under the name of "Teng Juan". The first and second